IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.6184 OF 2005

Najir Suleman Gote. ... Applicant.
Versus.
State of Maharashtra. ... Respondent.

Shri N.N.Gawankar with Shri Arfan Sait for the Applicant.
Ms.S.D.Shinde, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 30th Sept., 2005.

P.C.:

1. The submissions of the Advocate appearing for the Applicant and the learned A.P.P. for State were heard on the last date. Apart from the merits of the case, bail is souhgt on the ground of parity. The Applicant is claiming party on the basis of the order dated 29th August 2005 passed in Criminal Application No.5216 of 2005. The Advocate for the Applicant submitted that the entire case of the prosecution is based on the circumstantial evidence and there is no direct evidence available. The learned A.P.P. pointed out that the widow of the deceased has stated in her statement that the Applicant was seen moving with the deceased for about 8 to 10 days prior to the incident. The learned A.P.P. pointed out that there is a consistent version of the other witnesses. The learned A.P.P. submitted that in view of this material against the Applicant on record, the Applicant cannot claim parity.

2. I have considered the submissions. One of the grounds on which the bail is granted to the co-accused is that a stand was taken by the prosecution before the Sessions Court that a statement of the co-accused was recorded under section 164 of the said Code of 1973 before the Judicial Magistrate First Class, Chiplun on 6th May 2005 and before this Court the learned A.P.P. on instructions of the Investigating Officer stated that there was no such statement recorded of the co-accused. The reasons for granting bail to the co-accused have been summarised in the paragraph 5 of the order dated 29th August 2005 which reads thus:

> "5. The Applicants were arrested on 30th April, 2005. Now chargesheet is filed and investigation is complete. This is not a case where there is direct evidence against the Applicants and the evidence is only circumstantial evidence. There is doubt created about the prosecution case because of the stand taken by the prosecution regarding the statement of the accused No.2 under section 164 of the said Code of 1973. No criminal antecedents of the Applicants have been brought on record. Therefore, the Applicants are entitled to be enlarged on bail subject to stringent conditions. The witnesses will have to be protected by

imposing the stringent condition."

If these are the grounds on which this Court granted bail to the co-accused, there is no reason why bail should be denied to the Applicant on the ground of parity.

3. In view of this, the following order is passed:

(i) The Applicant shall be enlarged on bail in connection with C.R.No.56 of 2005 of Chiplun Police Station, subject to furnishing a personal bond of Rs.15,000/- with one or two sureties in the like amount.

(ii) The Bail is granted subject to condition that till the conclusion of the trial, the Applicant shall not enter the area falling within the jurisdiction of Chiplun Police Station, District Ratnagiri. The order will be given effect only after the Applicant furnishes to the Investigating officer the complete address of place where the Applicant proposes to stay after he is enlarged on bail.

(iii) The Bail is granted subject to condition that the Applicant will report to the concerned local Police Station once in a week till the conclusion of the trial.

(iv) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(v) The Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

(vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(vii) Application is disposed of in above terms.

(viii) The parties to act upon an authenticated copy of this order.

Judge.